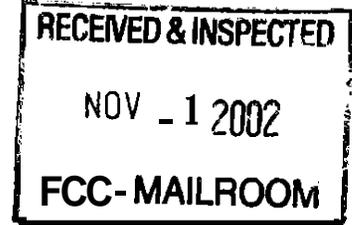


Before the
Federal Communications Commission
Washington, D.C. 20554



In the Matter of)
)
Application by Verizon Virginia Inc.,)
Verizon Long Distance Virginia, Inc.,)
Verizon Enterprise Solutions Virginia Inc.,)
Verizon Global Networks Inc., and Verizon)
Select Services of Virginia Inc., for)
Authorization to Provide In-Region,)
InterLATA Services in Virginia)

WC Docket No. 02 - 214

MEMORANDUM OPINION AND ORDER

Adopted: October 30,2002

Released: October 30,2002

By the Commission: Commissioners Copps and Martin approving in part, concurring in part, and issuing separate statements.

TABLE OF CONTENTS

I. INTRODUCTION 1
II. BACKGROUND 4
III. COMPLIANCE WITH SECTION 271(c)(1)(A) 7
IV. PRIMARY ISSUES IN DISPUTE 9
A. STATE CONSULTATION 11
B. VIRGINIA ARBITRATION PROCEEDING 13
C. CHECKLIST ITEM 2 - UNBUNDLED NETWORK ELEMENTS 21
1. OSS 22
2. UNE Combinations 59
3. Pricing of Unbundled Network Elements 62
D. CHECKLIST ITEM 4 - UNBUNDLED LOCAL LOOPS 138
E. CHECKLIST ITEM 8 - WHITE PAGES 152
1. Background 152
2. Discussion 153
V. OTHER CHECKLIST ITEMS 172

A.	CHECKLIST ITEM 1 – INTERCONNECTION	172
B.	CHECKLIST ITEM 5 – UNBUNDLED LOCAL TRANSPORT	181
C.	CHECKLIST ITEM 6 – UNBUNDLED LOCAL SWITCHING	184
D.	CHECKLIST ITEM 7 – 911/E911 ACCESS SERVICES	189
E.	CHECKLIST ITEM 11 – NUMBER PORTABILITY	191
F.	REMAINING CHECKLIST ITEMS (3, 9, 10, 12, 13 AND 14)	193
VI.	SECTION 272 COMPLIANCE	194
VII.	PUBLIC INTEREST ANALYSIS	195
A.	PUBLIC INTEREST TEST	195
B.	ASSURANCE OF FUTURE PERFORMANCE	198
C.	PREMATURE MARKETING.....	199
1.	Mail Solicitations	200
2.	Calling Cards	203
3.	Television Advertisements.....	204
4.	Other Incidents	205
5.	Discussion	207
VIII.	SECTION 271(d)(6) ENFORCEMENT AUTHORITY	208
IX.	CONCLUSION	212
X.	ORDERING CLAUSES	213
APPENDIX A – LIST OF COMMENTERS		
APPENDIX B – VIRGINIA PERFORMANCE METRICS		
APPENDIX C – STATUTORY APPENDIX		

I. INTRODUCTION

1. On August 1, 2002, Verizon Virginia Inc., Verizon Long Distance Virginia Inc., Verizon Enterprise Solutions Virginia Inc., Verizon Global Networks Inc., and Verizon Select Services of Virginia Inc., collectively, Verizon, filed an application pursuant to section 271 of the Communications Act of 1934, as amended,¹ for authority to provide in-region, interLATA service originating in the state of Virginia.² We grant the application in this Order based on our

¹ We refer to the Communications Act of 1934, as amended by the Telecommunications Act of 1996, as the Communications Act or the Act. 47 U.S.C. § 151 *et seq.*

² See Application By Verizon Virginia Inc., Verizon Long Distance Virginia Inc., Verizon Enterprise Solutions Virginia Inc., Verizon Global Networks Inc., and Verizon Select Services of Virginia Inc./or Authorization to Provide In-Region, InterLATA Services in Virginia, WC Docket No. 02-214 (filed Aug. 1, 2002) (Verizon Virginia Application).

conclusion that Verizon has taken the statutorily required steps to open its local exchange markets in Virginia to competition.

2. Grant of this application follows closely behind the Virginia State Corporation Commission's (Virginia Commission's) conclusion of proceedings concerning Verizon's section 271 compliance that were open to participation by all interested parties.' The Virginia Commission has established a broad range of performance guidelines, in addition to an ongoing industry collaborative to update and change metrics.⁴ In addition, the Virginia Commission has adopted a performance assurance plan to provide competitive local exchange carriers (competitive LECs) with an opportunity to resolve problems with Verizon should they fail to meet the defined performance guidelines.⁵ Moreover, the Virginia Commission participated in the third-party testing of Verizon's Operations Support Systems (OSS) conducted by KPMG Consulting, Inc. (KPMG).⁶ As the Commission has repeatedly recognized, state proceedings demonstrating a commitment to advancing the procompetitive purposes of the Act serve a vitally important role in section 271 proceedings.⁷

3. Verizon stated in its application that competitive LECs served approximately 763,000 lines.' As of June 2002, Verizon asserts that it had provided competing carriers in

³ See generally Verizon Virginia Application, App. C, Vol. 10, Tab 29, Report of Alexander F. Skirpan, Jr, Hearing Examiner Virginia Case No., PUC-2002-00046 (July 12, 2002) (Virginia Hearing Examiner's Repon).

⁴ Verizon Virginia Application, App. A, Vol. 3, Tab C, Declaration of Elaine M. Guerard, Julie A. Canny, and Marilyn C. DeVito (Verizon Guerard/Canny/DeVito Decl.), para. 14.

⁵ In April 2002, through a collaborative process overseen by the Virginia Commission staff, Verizon and the competitive LECs reached consensus on a Performance Assurance Plan, now known as the Virginia Plan. On July 18, 2002, the Virginia Commission approved the Plan for use in Virginia effective October 1, 2002. Verizon Guerard/Canny/DeVito Decl., para. 27.

⁶ Verizon Virginia Application, App. D, Vol. 2, Tab 5, KPMG Consulting, Verizon Virginia, Inc. OSS Evaluation Project, Final Report, Version 2.0, April 15, 2002 (KPMG Final Repon).

⁷ See *Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, CC Docket No. 01-138, Memorandum Opinion and Order, 16 FCC Record 17419, 17421, para. 3 (2001) (*Verizon Pennsylvania Order*); *Application of Verizon New York Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc. and Verizon Select Services, Inc. for Authorization to Provide in-Region, InterLATA Services in Connecticut*, CC Docket No. 01-100, Memorandum Opinion and Order, 16 FCC Rcd 14147, 14149, para. 3 (2001) (*Verizon Connecticut Order*); *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) And Verizon Global Networks Inc., for Authorization to Provide In-Region, InterLATA Services in Massachusetts*, CC Docket No. 01-9, Memorandum Opinion and Order, 16 FCC Rcd 8988, 8990, para. 2 (2001) (*Verizon Massachusetts Order*) *aff'd sub nom.* WorldCom, Inc. v. Federal Communications Commission, No. 01-1198, 2002 WL 31360443 (D.C. Cir. Oct. 22, 2002).

⁸ Verizon Virginia Application, App. A, Vol. 1, Tab A, Declaration of Paul A. Lacouture and Virginia P. Ruesterholz (Verizon Lacouture/Ruesterholz Decl.), para. 7.

Virginia with approximately 233,000 interconnection trunks and 198,000 unbundled loops.⁹ Competing carriers in Virginia serve approximately 22% of the total lines in the state.” Verizon states that there is proportionately more facilities-based competition in Virginia than in any state that **has** been granted section 271 authority, at the time those applications were filed.”

II. BACKGROUND

4. In the 1996 amendments to the Communications Act, Congress required that the Bell Operating Companies (BOCs) demonstrate compliance with certain market-opening requirements contained in section 271 of the Act before providing in-region, interLATA long distance service.¹² Under section 271, Congress requires that the Commission review BOC applications to provide such service in consultation with the affected state and the Attorney General.”

5. On March 15, 2002, Verizon made a compliance filing for section 271 approval with the Virginia Commission. On July 12, 2002, the Virginia Hearing Examiner issued a report recommending that the Virginia Commission “advise the FCC that this Commission supports granting Verizon authority to provide in-region interLATA services in Virginia.”¹⁵ On August 1, 2002, the Virginia Commission forwarded the Virginia Hearing Examiner’s Report to this Commission, reporting on the Virginia Hearing Examiner’s section 271 proceeding and urging the Commission to consider his recommendations and findings.¹⁶ The Virginia Commission stated that because it will “simply consult” with the Commission on Verizon’s

⁹ Verizon Virginia Application at 8

¹⁰ Verizon Virginia Application, App. A, Vol. 3, Tab F, Declaration of John A. Torre (Verizon Torre Decl.), Attach. 1, at 2.

¹¹ See Verizon Virginia Application at 89, Attach. A, Ex. 3.

¹² The Telecommunications Act of 1996, Pub. L. No. 104-104, § 10 Stat. 56 (1996).

¹³ The Commission has summarized the relevant statutory framework in prior orders. See, e.g., *Joinr Applicarion by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwesrern Bell Communicarions Services, Inc., d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, Memorandum Opinion and Order, 16 FCC Rcd 6237, 6241-42, paras. 7-10 (2001) (*SWBT Kansas/Oklahoma Order*), *affd in part, remanded in parr sub nom. Sprint Communications Co. v. FCC*, 214 F.3d 549 (D.C. Cir. 2001).

¹⁴ Verizon Virginia Application, App. C, Vol. 1a-f, Tab I, Verizon Virginia Inc. Section 271 Filing with the Virginia State Corporation Commission (In the Matter of the Inquiry into Verizon Virginia Inc.’s Compliance with the Conditions Set Forth in 47 U.S.C. § 271(c)).

¹⁵ Virginia Hearing Examiner’s Report at 1

¹⁶ See Letter from Clinton Miller, Chairman, Theodore V. Morrison, Jr., Commissioner, and HULLIHEN WILLIAMS MOORE, Commissioner, Virginia State Corporation Commission, to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Aug. 1, 2002) (Virginia Commission Aug. 1 *Ex Parte* Letter).

section 271 application, it would not initiate formal proceedings and did not intend to issue a final order **or** "make any final finding, decision settling the substantive law, order, **or** judgment" within the meaning of Virginia law.¹⁷

6. On September 5, 2002, the Department of Justice filed its evaluation. The Department of Justice recommends approval of this application with one qualification regarding Verizon's compliance with checklist item 8, directory listings. In particular, the Department concludes that:

The record in this matter suggests that Verizon **has** generally succeeded in opening its local markets in Virginia to competition in most respects. The Department therefore recommends approval of Verizon's application for Section 271 authority in Virginia, subject to the FCC's satisfying itself that Verizon is providing sufficiently accurate and reliable white pages directory listings."

III. COMPLIANCE WITH SECTION 271(c)(1)(A)

7. As a threshold matter, we address Verizon's compliance with section 271(c)(1) which requires as a prerequisite for any approval of a BOC's application to provide in-region, interLATA services, that the BOC demonstrate that it satisfies the requirements of either section 271(c)(1)(A) (Track A) or section 271(c)(1)(B) (Track B).¹⁹ To meet the requirements of Track A, a BOC must have interconnection agreements with one or more competing providers of "telephone exchange service. . . to residential and business customers." In addition, the Act states that "such telephone service may be offered . . . either exclusively over [the competitor's] own telephone exchange service facilities or predominantly over [the competitor's] own telephone exchange facilities in combination with the resale of the telecommunications services of another carrier."²¹ The Commission has concluded that section 271(c)(1)(A) is satisfied if one

¹⁷ Verizon Virginia Application, App. C, Vol. 2, Tab 2, Preliminary Order on Verizon Virginia's Compliance with the Conditions Set Forth in 47 U.S.C. § 271(c) and Order Amending Reporting Requirements on Third-party Testing of Operations Support Systems, Case Nos. PUC-02-0046 and Case No. PUC-00-0035, Mar. 20, 2002 (Virginia Commission Preliminary Order) at 3-4. The Virginia Commission Preliminary Order established a procedural schedule; set the public evidentiary hearings to begin on June 17, 2002; and appointed and delegated to the Virginia Hearing Examiner "all authority vested in the Commission by the Constitution and Code of Virginia to conduct formal proceedings, including a public hearing, to consider the section 271 filing and all evidence in support and opposition thereto." *Id.* The Virginia Commission did not require comments or exceptions to the Virginia Hearing Examiner's Report, but advised interested parties to participate in this Commission's proceedings. *Id.* at 4.

¹⁸ Department of Justice Virginia Evaluation at 10.

¹⁹ 47 U.S.C. § 271(d)(3)(A).

²⁰ 47 U.S.C. § 271(c)(1)(A)

²¹ *Id.*

or more competing providers collectively serve residential and business **subscribers**,²² and that the use of unbundled network elements (UNEs) constitute a competing provider's "own telephone exchange service facilities" for purposes of section 271(c)(1)(A).²³ The Commission has further held that a BOC must show that at least one "competing provider" constitutes "an actual commercial alternative to the BOC,"²⁴ which a BOC can do by demonstrating that the provider serves "more than a *de minimis* number" of subscribers?²⁵ The Commission has interpreted Track A not to require any particular level of market penetration, however, and the D.C. Circuit has affirmed that the Act "imposes no volume requirements for satisfaction of Track A."²⁶

8. We conclude, as the Virginia Hearing Examiner **did**,²⁷ that Verizon satisfies the requirements of Track A in Virginia. Verizon relies on interconnection agreements with AT&T, Cox, Comcast, and Cavalier in support of its Track A showing, and we find that each of these carriers serves more than a *de minimis* number of residential and business end users predominantly over its own facilities and represents an "actual commercial alternative" to Verizon in Virginia.²⁸ Specifically, AT&T provides telephone exchange service to both residential and business subscribers in Virginia primarily through UNE loops, UNE-platforms and their own cable facilities.²⁹ Cox and Comcast provide service to both residential and

²² *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended. To Provide In-Region InterLATA Services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, 12 FCC Rcd 20543, 20589, para. 85 (1997) (*Ameritech Michigan Order*); see also *Application by BellSouth Corporation et al. Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region InterLATA Services in Louisiana*, CC Docket No. 98-121, Memorandum Opinion and Order, 13 FCC Rcd 20599, 20633, paras. 46-48 (1998) (*Second BellSouth Louisiana Order*).

²³ *Ameritech Michigan Order*, 12 FCC Rcd at 20598, para. 101

²⁴ *Application by SBC Communications Inc., Pursuant to Section 271 of the Communications Act of 1934, as amended. To Provide In-Region InterLATA Services in Oklahoma*, Memorandum Opinion and Order, 12 FCC Rcd 8685, 8695, para. 14 (1997) (*SWBT Oklahoma Order*).

²⁵ *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6251, para. 42; see also *Ameritech Michigan Order*, 12 FCC Rcd at 20585, para. 78.

²⁶ *Sprint Communications Co. v. FCC*, 274 F.3d at 553-54 (D.C. Cir. 2001); see also *SBC Communications Inc. v. FCC*, 138 F.3d 410, 416 (D.C. Cir. 1998) ("Track A does not indicate just how much competition a provider must offer in either the business or residential markets before it is deemed a 'competing' provider.").

²⁷ Virginia Hearing Examiner's Report at 11, 171.

²⁸ Verizon Virginia Application at 6-7; Verizon Torre Decl., Attach. I, paras. 23-30 (citing confidential portion). According to Verizon, competing LECs now serve approximately 2,200 residential lines through UNE-platform or UNE loops. The numbers of customers attributed to certain competing LECs are available on the record pursuant to the protective order. Verizon also notes that many other competing LECs, such as Cavalier, **Cox**, and **Comcast**, serve business customers in Virginia over their own facilities. Verizon Torre Decl., Attach. I, paras. 4-6 (citing confidential portion); see also *SWBT Oklahoma Order*, 12 FCC Rcd at 8695, para. 14.

²⁹ Verizon Torre Decl., Attach. I, paras. 23-24 (citing confidential portion)

business customers in Virginia through UNE loops and their **own** facilities.³⁰ Cavalier provides service to both residential and business customers primarily through UNE loops.” No commenter disputes Verizon’s Track A showing.

IV. PRIMARY ISSUES IN DISPUTE

9. In a number of prior orders, the Commission discussed in considerable detail the analytical framework and particular legal showing required to establish checklist compliance.” In this Order, **we** rely upon the legal and analytical precedent established in those prior orders. Additionally, **as** we began doing with the *Verizon Connecticut Order*, we include comprehensive appendices containing performance data and the statutory framework for approving section 271 applications.” In reviewing this application, we examine performance data **as** reported in carrier-to-carrier reports reflecting service in the period from April 2002 through July 2002.

10. We focus in this Order on the issues in controversy in the record. Accordingly, we begin by addressing issues concerning the openness and legal validity of the state consultation process and the relevance to our review of checklist compliance of the recent Virginia arbitration decision issued by the Wireline Competition Bureau (Bureau). We then discuss Verizon’s compliance with checklist item numbers 2, 4, and 8, which encompass access to UNEs, access to unbundled local loops, and directory listings, respectively. Next, we address checklist item numbers 1, 5, 6, 7, and 11, which cover interconnection, transport, switching, 911/E911 access and directory assistance/operator services, and number portability, respectively. The remaining checklist requirements are discussed briefly, as they received little or no attention from commenting parties, and our own review of the record leads us to conclude that Verizon has satisfied these requirements. Finally, we discuss issues concerning compliance with section 272 and the public interest requirement.

A. State Consultation

11. AT&T argues that neither the Virginia Hearing Examiner’s Report nor the Virginia Commission August 1 *Ex Parte* Letter constitute “lawful pronouncements” of the

³⁰ Verizon Torre Decl., Attach. I, paras. 27-30 (citing confidential portion).

³¹ Verizon Torre Decl., Attach. I, paras. 25-26 (citing confidential portion).

³² See *Application by SBC Communications, Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, Memorandum Opinion and Order, 15 FCC Rcd 18354, 18359-61, paras. 8-11, 21-40, 43-58 (2000) (*SWBT Texas Order*); *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, 15 FCC Rcd 3953, 3961-63, 3966-69, 3971-76, paras. 17-20, 29-37, 43-60 (1999) (*Bell Atlantic New York Order*), *aff’d sub nom. AT&T Corp. v. FCC*, 220 F.3d 607 (D.C. Cir. 2000); see also Appendix C.

³³ See generally Appendices B and C.

Virginia Commission under Virginia law and therefore may not be given any weight by this Commission.³⁴ AT&T maintains that we must base our decision on a *de novo* analysis of the state record, “with no deference accorded” to the Virginia Hearing Examiner’s Report.”

12. We do not agree with AT&T that the findings in Virginia deserve no weight in our analysis. The pertinent issue for the Commission is whether the Virginia Hearing Examiner’s Report constitutes the Virginia Commission’s consultation pursuant to section 271(d)(2)(B).³⁶ We find that it does. We note, at the outset, that section 271(d)(2)(B) establishes no specific procedural requirements for how a state commission must fulfill its consultative role. Accordingly, we have the discretion to accord such weight to a state’s consultation as we may deem appropriate in a particular case.” The formal docket in the Virginia Commission’s section 271 compliance proceeding included submission of testimony from interested parties and five days of hearings.” While parties did not have an opportunity to file comments or take exceptions to the Virginia Hearing Examiner’s Report, parties were provided an opportunity to submit testimony before the Virginia Hearing Examiner. On these facts, we reject the contention that we should give no deference or weight whatsoever to the state’s consultative report. Therefore, we disagree with AT&T’s argument that we must conduct a *de novo* analysis of the record in the state proceeding. Rather, in assessing the weight we give to the Virginia Hearing Examiner’s Report, we factor in the procedures under which it was adopted in determining the proper weight it deserves. In previous section 271 orders, we have noted that the weight we assign to a state’s consultative report is affected by the procedures that the state commission follows to render its report.” Consistent with that, we will accord some weight to the Virginia Hearing Examiner’s Report, recognizing that it is based in part on an evidentiary procedure employed by the Virginia

³⁴ AT&T Reply at 16.

³⁵ AT&T Reply at 16

³⁶ We express no opinion in response to AT&T’s claim that these documents do not qualify as lawful pronouncements of the Virginia Commission under Virginia law. We are not required to reach this question as part of an analysis under section 211. That is a matter of state law interpretation, appropriate for consideration by state authorities.

³⁷ See, e.g., *Bell Atlantic New York Order*, 15 FCC Rcd at 3962, para. 20; *Ameritech Michigan Order*, 12 FCC Rcd at 20559-60, para. 30. As the D.C. Circuit has held, “[a]lthough the Commission must consult with the state commissions, the statute does not require the Commission to give State Commissions’ views any particular weight.” *SBC Communications Inc. v. FCC*, 138 F.2d 410, 416 (D.C.Cir. 1998).

³⁸ See Letter from Ann D. Berkowitz, Project Manager – Federal Affairs, Verizon, to Marlene H. Donch, Secretary, Federal Communications Commission, WC Docket No. 02-214 (filed Sept. 26, 2002) (Verizon Sept. 26 Virginia Commission Recommendation Ex *Porte* Letter).

³⁹ See *Bell Atlantic New York Order*, 15 FCC Rcd at 3962, para. 20; *Ameritech Michigan Order*, 12 FCC Rcd at 20559-60, para. 30.

Commission that provided an opportunity for parties to participate in hearings and offer comments.⁴⁰

B. Virginia Arbitration Proceeding

13. AT&T, Cox, and WorldCom originally brought interconnection disputes with Verizon to the Virginia Commission, as envisioned in section 252(b).⁴¹ However, the Virginia Commission declined to arbitrate the terms and conditions of an interconnection agreement under federal standards, as required by section 252(c) of the Act.⁴² The three requesting carriers then petitioned the Commission to preempt the Virginia Commission pursuant to section 252(e)(5).⁴³ The Commission granted those petitions and delegated authority to the Wireline Competition Bureau to conduct the arbitration proceeding.⁴⁴ The *Virginia Arbitration Order*⁴⁵ addresses the

⁴⁰ Virginia Commission Preliminary Order at 4. We have previously given consideration to state recommendations on section 271 applications where the state commission's proceeding did not culminate with an order. See *Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NWEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select services Inc., for Authorization to Provide In-Region, InterLATA Services in Rhode Island*, CC Docket No. 01-324, Memorandum Opinion and Order, 17 FCC Rcd 3300, 3304, n.9 (2002) (*Verizon Rhode Island Order*); *Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in Vermont*, CC Docket No. 02-7, Memorandum Opinion & Order, 17 FCC Rcd. 9018, 9022, n.11 (2002) (*Verizon Vermont Order*); *Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEA Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc. and Verizon Select Services in Maine*, CC Docket No. 02-6, Memorandum Opinion and Order, 17 FCC Rcd 11,659, 11,664, n. 12 (2002) (*Verizon Maine Order*), See also *Verizon Sept. 26 Virginia Commission Recommendation Ex Parte Lener* at 3.

⁴¹ 47 U.S.C. § 252(b).

⁴² 47 U.S.C. § 252(c).

⁴³ *Petition of WorldCom, Inc., Pursuant to Section 252(e)(5) of the Communications Act*, CC Docket No. 00-218, (filed Oct. 26, 2000); *Petition of Cox Virginia Telecom, Inc. Pursuant to Section 252(e)(5) of the Communications Act*, CC Docket No. 00-249 (filed Dec. 12, 2000); *Petition of AT&T Communications of Virginia, Inc. Pursuant to Section 252(e)(5) of the Communications Act*, CC Docket No. 00-251 (filed Dec. 15, 2000).

⁴⁴ *Petition of WorldCom, Inc. for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act and for Arbitration of Interconnection Disputes with Verizon-Virginia, Inc.*, CC Docket No. 00-218, Memorandum Opinion and Order, 16 FCC Rcd 6224 (2001); *Petition of Cox Virginia Telecom, Inc. for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act and for Arbitration of Interconnection Disputes with Verizon-Virginia, Inc.*, CC Docket No. 00-249, Memorandum Opinion and Order, 16 FCC Rcd 2321 (2001); *Petition of AT&T Communications of Virginia, Inc. for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act and for Arbitration of Interconnection Disputes with Verizon-Virginia, Inc.*, CC Docket No. 00-251, Memorandum Opinion and Order, 16 FCC Rcd. 2326 (2001). See also *Procedures for Arbitrations Conducted Pursuant to Section 252(e)(5) of the Communications Act of 1934, as amended*. FCC 01-21 (rel. Jan. 19, 2001).

non-cost issues presented by the parties for arbitration. The second decision, addressing the cost issues presented, has not yet been adopted.

14. WorldCom makes a detailed challenge to this application based, in large part, on issues arising from the *Virginia Arbitration Order*. WorldCom presents a three-tiered argument suggesting that Verizon is in *per se* non-compliance with section 271 because: (1) Verizon does not have interconnection agreements in Virginia that **fully** comply with the Act; (2) Verizon's application was not complete when filed because Verizon had not memorialized the agreements required by the *Virginia Arbitration Order* prior to its filing of its section 271 application; and (3) Verizon is not operationally ready to implement the decisions of the *Virginia Arbitration Order*.

15. Verizon maintains that the issues decided in the *Virginia Arbitration Order* that require modifications to its interconnection agreements do not alter its ability to demonstrate present compliance with the **checklist**.⁴⁶ Verizon also points out that, at the time of its section 271 filing, it had notified competitive carriers in its territory through an industry letter of the availability of service offerings and arrangements found to be required by applicable law in the *Virginia Arbitration Order*.⁴⁷

16. On September 3, 2002, Verizon filed its interconnection agreements with the Bureau.⁴⁸ On October 8, 2002, upon review, the Bureau approved and deemed effective

(Continued from previous page) _____

⁴⁵ *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket No. 00-218, *Petition of Cox Virginia Telecom, Inc. for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act and for Arbitration of Interconnection Disputes with Verizon-Virginia, Inc.*, CC Docket No. 00-249, *Petition of AT&T Communications of Virginia Inc./or Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act and for Arbitration of Interconnection Disputes with Verizon-Virginia, Inc.*, CC Docket No. 00-251, Memorandum Opinion and Order, DA 02-1731 (WCB July 17, 2002) (*Virginia Arbitration Order*).

⁴⁶ Verizon Virginia Reply at 6-7. Verizon claims that the new requirements fall into three categories. The first group includes items that are similar or identical to what Verizon already provides in Virginia. As an example, Verizon cites to interconnection **hunks** with DS-3 interfaces and two-way **trunking**. The second group includes items that Verizon claims it has already demonstrated it can provide in other states. Verizon cites the provision of dark fiber **through** intermediate offices **as** an example. The third group includes items that Verizon claims competing carriers have demonstrated little interest in purchasing **in** the past, citing tandem switching and customized routing as examples.

⁴⁷ See Lener from Ann D. Berkowitz, Project Manager – Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-214 (filed Aug. 2, 2002) (Verizon Aug. 2 **Industry Letter Ex Parte Letter**); **Errata** from Ann D. Berkowitz, Project Manager – Federal Affairs, Verizon, to Marlene H. Donch, Secretary, Federal Communications Commission, WC Docket No. 02-214 (filed **Aug.** 6, 2002).

⁴⁸ See Verizon Virginia Reply App. B, Vol. 2, Tabs 8 and 9; Letter from Ann D. Berkowitz, Project Manager – Federal Affairs, Verizon, to Marlene H. Donch, Secretary, Federal Communications Commission, WC Docket No. 02-214 (filed Sept. 18, 2002) (Verizon Sept. 18 **Cox Agreement Ex Parte Letter**).

Verizon's interconnection agreements, which contain the specific and concrete legal obligations that memorialize the decisions of the *Virginia Arbitration Order*.⁴⁹ We find that the Bureau approval of these agreements eliminates any question of checklist compliance arising from claims that the agreements were not final. Verizon's actions to implement the *Virginia Arbitration Order* represent a straightforward step that has already been taken, and does not constitute a promise of future action. We therefore find WorldCom's arguments alleging that Verizon did not have interconnection agreements in Virginia that fully comply with the Act and that Verizon's section 271 application was premature until the contracts were finalized to now be moot.

17. In addition, we find unpersuasive WorldCom's argument that Verizon has not demonstrated operational readiness to implement specific offerings in its new interconnection agreement with WorldCom. As discussed more fully below, we conclude that Verizon has adequately addressed its commercial readiness to furnish each of these items in Virginia. Verizon has shown that it is either already furnishing the items in Virginia or is successfully doing so in other states and can bring that experience to bear in Virginia immediately.⁵⁰ We therefore conclude that Verizon has demonstrated its operational readiness to provide the offerings cited by WorldCom.

18. In reaching this conclusion, because the agreements were not effective until October 8, 2002, we waive the complete-as-filed requirement⁵¹ on our own motion pursuant to section 1.3 of the Commission's rules to the limited extent necessary to consider Verizon's finalized interconnection agreements in Virginia in the instant decision. We find that the interests our normal procedural requirements are designed to protect, such as deterring

⁴⁹ *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket No. 00-218, *Petition of Cox Virginia Telecom, Inc. for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act and for Arbitration of Interconnection Disputes with Verizon-Virginia, Inc.*, CC Docket No. 00-249, *Petition of AT&T Communications of Virginia, Inc. for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act and for Arbitration of Interconnection Disputes with Verizon-Virginia, Inc.*, CC Docket No. 00-251, Memorandum Opinion and Order, DA 02-2576 (WCB Oct. 8, 2002) (*Virginia Arbitration Approval Order*).

⁵⁰ See Verizon Virginia Reply at 6-7. See *infra*, paras. 147, 150, 177, 183, 187 and n.659

⁵¹ The "complete-as-filed" requirement provides that when an applicant files new information after the comment date, the Commission reserves the right to start the 90-day review period again or to accord such information no weight in determining section 271 compliance. *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6247, para. 21. We maintain this requirement to afford interested parties a fair opportunity to comment on the BOC's application, to ensure that the Attorney General and the state commission can fulfill their statutory consultative roles, and to afford the Commission adequate time to review the record. See *Ameritech Michigan Order*, 12 FCC Rcd. at 20572-73, para. 52-54. The Commission can waive its procedural rules, however, "if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest." *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969); see also 47 U.S.C. § 154(j); 47 C.F.R. § 1.3.

incomplete applications and providing sufficient opportunity for interested parties to comment, are not affected by our consideration of these interconnection agreements. We also conclude that consideration of the interconnection agreements at least in this instance will serve the public interest. At the same time, we emphasize that we will continue to enforce our procedural requirements in future section 271 applications, in the absence of such special circumstances, in order to ensure a fair and orderly process for the consideration of section 271 applications within the 90-day statutory deadline.

19. We are concerned that Verizon filed its application prior to implementing interconnection agreements that fully comply with the checklist and the Bureau's arbitration decision. We caution other applicants against premature filings. We now must decide whether to waive the complete-as-filed rule. We conclude that a waiver of the rule in this instance will serve the public interest. There are a number of special circumstances that support grant of this waiver to permit consideration of the interconnection agreements in determining section 271 compliance. First, the finalizing of the interconnection agreements has a limited but positive effect on our consideration of Verizon's section 271 application. We need to rely on these interconnection agreements to confirm compliance with only a limited subset of our rules that are relevant to checklist compliance." In addition, unlike new performance evidence, all parties have known the contents of the *Virginia Arbitration Order* since July 17, 2002. Since then, the parties only had to memorialize this decision as an actual agreement and receive approval for that agreement. Verizon was simply adhering to the procedures for filing the agreements outlined in the *Virginia Arbitration Order*." To the extent that Verizon's previous interconnection agreements in Virginia arguably did not include every offering required by section 251 and the Commission's rules, those omissions have now been rectified by Verizon's new agreements with WorldCom, Cox and AT&T. Thus, it does not appear that there was an attempt to game the process or to delay meeting its obligations under the statute.

20. Finally, we find that there has been adequate opportunity for comment on these new interconnection agreements. Specifically, the *Virginia Arbitration Order* was released on July 17, 2002. The parties to that proceeding have had the opportunity to review the Bureau's decision and to seek reconsideration of any items in dispute.⁵⁴ Interested parties were also able to review the Bureau's decisions and familiarize themselves with the new offerings Verizon was required to make available in Virginia." For these reasons, we find that the circumstances

⁵² See WorldCom Comments at 10-14, listing six specific examples of new offerings that Verizon is required to provide pursuant to the arbitration. They are: customized routing for OS/DA; access to sub-loops without intermediary devices; stand-alone tandem switching; two-way trunking on demand; interconnection of DS-3 bunks where technically feasible; and provisioning of dark fiber through intermediary offices.

⁵³ See *Virginia Arbitration Order*, para. 161

⁵⁴ See WorldCom Application for Review (filed Aug. 16, 2002); Verizon Petition for Clarification and Reconsideration (filed Aug. 16, 2002); AT&T Petition for Reconsideration (filed Aug. 16, 2002).

present in this instance warrant waiver of our procedural requirements, and allow consideration of Verizon's finalized interconnection agreements.

C. Checklist Item 2 – Unbundled Network Elements

21. Checklist item 2 of section 271 states that a BOC must provide “nondiscriminatory access to network elements in accordance with sections 251(c)(3) and 252(d)(1)” of the Act.⁵⁶ Section 251(c)(3) requires incumbent LECs to provide “nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that *are* just, reasonable, and nondiscriminatory.”⁵⁷

1. OSS

22. Checklist item 2 requires a BOC to demonstrate that competitors have nondiscriminatory access to the various systems, databases, and personnel (collectively referred to as OSS) that a BOC uses in providing service to its customers.⁵⁸ Based on the evidence in the record, including commercial data and third-party testing, we find, as did the Virginia Hearing Examiner, that Verizon provides non-discriminatory access to its OSS in Virginia.⁵⁹

23. Like the Virginia Hearing Examiner, we note that there are substantial similarities between the OSS available to competitors in Virginia and the OSS that we have approved in previous section 271 applications filed by Verizon.⁶⁰ Importantly, however, in Virginia, Verizon uses an integrated service order processor and billing system known as *expressTRAK* that is not

(Continued from previous page)

⁵⁵ We note that only one competing carrier has responded to Verizon's August 1 letter. See Verizon Virginia Reply, App. A, Tab A, Reply Declaration of Paul A. Lacouture and Virginia P. Ruesterholz (Verizon Lacouture/Ruesterholz Reply Decl.). para. 113.

⁵⁶ 47 U.S.C. § 271(B)(ii). Overturning a 1997 decision of the Eighth Circuit Court of Appeals, on May 13, 2002, the U.S. Supreme Court upheld sections 51.315(c)-(f) of the Commission's rules, which, subject to certain limitations, require incumbent LECs to provide combinations of UNEs “not ordinarily combined in the incumbent LEC's network” and to “combine unbundled network elements with the elements possessed by the requesting telecommunications carrier.” *Verizon Communications, Inc. v. FCC*, 122 S. Ct. 1646 (2002). In a prior decision, the Supreme Court upheld the Commission's authority to adopt sections 51.315(a)-(b) of the Commission's rules, which establish the general obligation of an incumbent LEC to provide combinations of network elements and require an incumbent LEC not to separate requested elements that it currently combines, except upon request. *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 385, 393-95 (1999).

⁵⁷ 47 U.S.C. § 251(c)(3).

⁵⁸ *Bell Atlantic New York Order*, 15 FCC Rcd at 3989-90, para. 83.

⁵⁹ Virginia Hearing Examiner's Repon at 77

⁶⁰ Virginia Hearing Examiner's Repon at 68; see Verizon McLean/Wierzbicki/Webster Decl., paras. 25-26 & Tables 1-2. Specifically, Verizon certifies that the interfaces and gateways to its OSS are common to those serving the rest of the former Bell Atlantic service area. Verizon McLean/Wierzbicki/Webster Decl., para. 25.

used in any state for which Verizon has previously received section 271 approval.⁶¹ Given the integral role that a service order process plays in the operation of the OSS, we must assure ourselves of the operational readiness of the OSS particular to **Virginia**.⁶²

24. Consistent with our past practice, we focus our review on those OSS **issues** in controversy and do not address each OSS element in detail where our review of the record satisfies us there is little or no dispute that Verizon meets the nondiscrimination requirements.” Specifically, our discussion focuses on the sufficiency of third-party testing; the accuracy of Verizon’s loop prequalification databases and competing carriers’ ability to access them on a nondiscriminatory basis; Verizon’s wholesale billing practices; and Verizon’s change management processes and procedures. For those areas of Verizon’s OSS that have not been **raised** in contention by commenters or otherwise discussed below, **we** are satisfied that our review of the record, including our analysis of Verizon’s commercial performance data for Verizon’s OSS in Virginia, indicates that Verizon is providing OSS to competitors in a nondiscriminatory manner, in compliance with the **checklist**.⁶⁴

a. Third-party Testing

25. Although Verizon ultimately relies on a variety of evidence to demonstrate that it is providing nondiscriminatory access to its OSS in Virginia, Verizon partially supports its application with the results of an independent third-party test of the ability of Verizon’s OSS to support local market entry by competing carriers in Virginia. Specifically, the Virginia Commission retained KPMG Consulting (KPMG) to perform a military-style test substantially similar to the third-party OSS analysis KPMG conducted in other Verizon states that have received section **271 approval**.⁶⁵ KPMG analyzed the five functional OSS domains through 545 transactional and operational tests points including volume and stress **testing**.⁶⁶ Additionally, as

⁶¹ Verizon states that it uses expressTRAK throughout its service territories in the states of Virginia, Maryland, West Virginia, and the District of Columbia and that expressTRAK was the system tested by KPMG. Verizon **McLean/Wierzbicki/Webster** Decl., para. **26**. Although Verizon claims that its systems are identical within this region, we do not make a specific determination regarding the **sameness** of Verizon’s OSS between Virginia and Maryland, the District of Columbia, or West Virginia.

⁶² *Verizon New Jersey Order*, 17 FCC Rcd at **12308-09**, para. **76 & n.205** (Because Verizon used a unique service order processor in New Jersey not used in any of its section **211**-approved states, the Commission undertook a close examination of Verizon’s OSS in order “to be confident that [the unique service order processor] ha[d] no material impact on Verizon’s performance”).

⁶³ *Verizon New Jersey Order*, **17** FCC Rcd at **12309**, para. **71**.

⁶⁴ In the few instances where Verizon has failed to meet its commercial performance benchmarks or parity standards, we are persuaded that its performance is not competitively significant **and conforms to the Commission’s** precedent. See Appendix B.

⁶⁵ Verizon **McLean/Wierzbicki/Webster** Decl., paras. **11-22**; KPMG Final Repon at **9-16**

⁶⁶ Verizon **McLean/Wierzbicki/Webster** Decl., paras. **14-22**; KPMG Final Repon at **12-13**, 18-19

discussed more fully below, Verizon engaged PricewaterhouseCoopers (PwC) to conduct an attested review of a newly introduced carrier bill format provided by Verizon.⁶⁷

26. The persuasiveness of a third-party review depends upon the conditions and scope of the review.⁶⁸ Only one competing carrier, Covad, disputes the sufficiency of KPMG's third-party analysis.⁶⁹ Covad asserts that KPMG did not adequately review actual competing carrier interaction with Verizon, especially regarding billing.” Additionally, Covad alleges that, while KPMG tested Verizon's loop prequalification databases for functionality, it did not test the accuracy of the underlying database information.”

27. We find that Covad's arguments, as a general matter, do not undermine the informative value of KPMG's analysis of Verizon's OSS. **As** discussed in further detail below, to the extent we find that a test is limited in scope or depth, we rely on other evidence such as commercial performance.* Because we find, based on the record, that KPMG's analysis of Verizon's OSS in Virginia was broad and objective, we find that KPMG's analysis provides meaningful evidence that is relevant to our analysis of Verizon's OSS.

b. Pre-Ordering

28. Based on the evidence in the record, we conclude that Verizon demonstrates that it provides nondiscriminatory access to its OSS pre-ordering functions. Competing carriers in Virginia receive the same pre-ordering information as Verizon retail representatives and use the same three electronic pre-ordering interfaces that Verizon provides in states where it has already received section 271 approval.⁷³ Verizon's pre-ordering interfaces are handling large commercial volumes in Virginia and its performance data generally shows that Verizon is providing pre-ordering functions in a nondiscriminatory manner.⁷⁴

⁶⁷ Verizon McLean/Wierzbicki/Webster Decl., paras. 145-46. This analysis of Verizon's billing system is discussed in greater detail below.

⁶⁸ *Amerirech Michigan Order*, 12 FCC Rcd at 20659, para. 216

⁶⁹ We also note that Cavalier describes KPMG's third-party OSS testing as “abstract,” but does not allege any specific failure. Cavalier Comments at 28.

⁷⁰ Covad Comments at 14.

⁷¹ Covad Comments at 8.

⁷² See *Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of in-Region, InterLATA Services in Georgia and Louisiana*, CC Docket No. 02-35, Memorandum Opinion and Order, 17 FCC Rcd 9018,9070-71, para. 105 (2002) (*BellSouth Georgia/Louisiana Order*) (stating the same standard).

⁷³ Verizon McLean/Wierzbicki/Webster Decl., paras. 28, 31

⁷⁴ Verizon McLean/Wierzbicki/Webster Decl., paras. 4243.

29. **Loop Qualification Information.** We find that Verizon provides competitive LECs with access to loop qualification information consistent with the requirements of the *UNE Remand Order*.⁷⁵ Specifically, we find that Verizon provides competitors with access to all of the same detailed information about the loop that is available to itself and in the same time frame as Verizon personnel obtain it.”

30. Verizon provides competitive carriers with a real time loop qualification tool, Livewire, and a host of other loop qualification information that is available through batch reports or normal processing.” Two commenters, Covad and NTELOS, express concern over Verizon’s prequalification database. Specifically, Covad claims that inaccuracies in Verizon’s mechanized prequalification database, Livewire, discriminate against competitive LECs.⁷⁸ Covad alleges that LiveWire is designed to provide Verizon’s affiliate with the information it needs, while competing carriers obtain incorrect information and must go **through** numerous additional steps, some at significant cost, to obtain complete loop qualification information.⁷⁹

31. In its reply comments, Covad makes additional allegations based on newly-discovered information. Specifically, based on its receipt of a batch loop qualification data extract from Verizon in two formats, Covad claims that Verizon maintains separate and different sets of loop makeup information, one for its retail broadband division (formerly known as VADI), and one for competitors.“ Covad also alleges that Verizon maintains address-specific

⁷⁵ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Repon and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696,3886, para. 429 (1999) (*UNE Remand Order*).

⁷⁶ See Verizon McLean/Wierzbicki/Webster Decl., Attach. 2, at 1-7.

⁷⁷ Verizon McLean/Wierzbicki/Webster Decl., Attach. 2, at 3-7. If loop qualification information for a customer’s address has not been included in Livewire, or if a competitive carrier fails to pre-qualify a loop through Livewire, a competitive carrier can request an on-demand loop qualification by using the xDSL Loop Qualification – Extended (LXE) Inquiry transaction. Verizon also provides competitive carriers with electronic access to loop make-up information contained in its back office inventory Loop Facilities Assignment and Control System (LFACS). Finally, a competitive carrier may submit an Engineering Record Request for full loop make-up, including loop length, **type** of facility, cable gauge for each section of the loop, location of any load coils and location and length of any bridge tap. **Id**

⁷⁸ Covad Comments at 10. See also NTELOS Comments at 7-8, alleging that Verizon’s loop qualification database incorrectly rejected 32% of NTELOS’ DSL orders as unqualified.

⁷⁹ Covad Comments at 14. Covad claims that LiveWire falsely reports certain loops as non-qualified for DSL, requiring Covad to either turn away a customer or incur manual loop qualification charges. **Id.** at 6.

⁸⁰ Covad Reply at 2-4. Covad refers to these extracts as the “CLEC extract” and the “VADI extract”. VADI was the name of Verizon’s separate **data** affiliate that **was** created pursuant to the conditions established by the Commission in its Bell Atlantic/GTE Merger Order. *Application of GTE Corporation and Bell Atlantic Corporation /or Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Applications to Transfer Control of a Submarine Cable Landing License*. CC Docket No. 98-184, Memorandum Opinion and Order, 15 FCC Rcd 14032 (2000) (*Bell Atlantic/GTE Merger Order*). In its *ASCENT* decision, the D.C. Circuit ruled that this affiliate was a successor or assign of an incumbent LEC under section 251(h). *Assoc. of* (continued...)

information about the end user loops served by remote terminals, but does not provide this loop makeup information to competitors at the pre-ordering stage, as required by the *UNE Remand Order*.” Covad claims that it needs this loop makeup information in order to determine where to invest in central office collocations to make use of Verizon’s Packet at Remote Terminal Service (PARTS) network facilities and serve end users over PARTS-equipped remote terminals from a Verizon central office.⁸² Further, Covad maintains that Verizon does not make access to the underlying databases supplying information to the RequestNET system⁸³ available to competitors at all, and only makes filtered information available through RequestNET after the ordering stage.”

32. Verizon states that, through the New York DSL collaborative, it has undertaken efforts to ensure that Livewire contains accurate information.” According to Verizon, 100 percent of the loops in former Bell Atlantic central offices in Virginia have now been tested and categorized.⁸⁶ Verizon argues that its retail operations make use of the same LiveWire database and are equally affected by any remaining inaccuracies. Verizon also maintains that it provides

(Continued from previous page)

CornrnunicationsEnter. v. FCC, 235 F.3d 662 (D.C. Cir. 2001) (*ASCENT v. FCC*). Under the terms of the Bell Atlantic/GTE Merger Order, Verizon had the right to reintegrate the affiliate with its operating company if a court issued such a ruling. *Bell Atlantic/GTE Merger Order*, 15 FCC Rcd. at 14,153, para.265. The Commission granted Verizon’s request to accelerate Verizon’s right under the Bell Atlantic/GTE Merger Order to reintegrate its affiliate with the operating company as a separate division. See *Application of GTE Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent To Transfer Control of Domestic and International Section 214 and 310 Authorizations and Applications To-Transfer Control of a Submarine Cable Landing License*, Order, CC Docket No. 98-184, 16 FCC Rcd 16915 (2001). Verizon claims it now provides DSL service through a separate division that uses the same interfaces as competitive LECs for a substantial majority of its orders. See Verizon Virginia Application at 29 n.28.

⁸¹ Covad Reply at 4-5. Covad alleges that the information it seeks is maintained in electronic form in Verizon’s LFACS database but Verizon forces Covad to obtain this information through a cumbersome paper process associated with a request for remote terminal collocation. *Id.* at 5.

⁸² Covad Reply at 5. According to Verizon, PARTS would give collocated carriers the ability to use the same facilities that Verizon will use to provide digital subscriber line service through remote terminals. See Letter from Ann D. Berkowitz, Project Manager-Federal Affairs, Verizon to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket 02-214 (filed Aug. 29, 2002) (Verizon Aug. 29 PARTS *Ex Parte* Letter), attaching Verizon’s Reply in Verizon Telephone Companies, Tariff FCC Nos. I & II, Transmittal No. 232, filed Aug. 22, 2002, at 1.

⁸³ Verizon explains that RequestNET is an internal Verizon work management tool used to manage certain work requests that require people in the provisioning and engineering organizations to perform work steps. The database underlying RequestNET holds work requests formatted in standard electronic forms. Lener from Ann D. Berkowitz, Project Manager-Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-214 (filed Sept. 25, 2002) (Verizon Sept. 25 OSS/White Pages *Ex Parte* Letter) at 4-5.

⁸⁴ Covad Reply at 5-6.

⁸⁵ Verizon McLean/Wierzbicki/Webster Decl., Attach. 2, at 3

⁸⁶ Verizon McLean/Wierzbicki/Webster Decl., Attach. 2, at 3

the same pre-order loop qualification information, through the same systems, in Virginia as it does in New York, Connecticut, Massachusetts, Pennsylvania, Rhode Island, Vermont, Maine, and New Jersey, all states where Verizon has received section 271 approval.*'

33. In response to Covad's new allegations, Verizon states that it makes available to competitors the same batch loop makeup information it makes available to itself." Verizon explains that Covad incorrectly received from Verizon an extract that had been populated with additional information created by Verizon's broadband division." Verizon claims that its retail broadband division uses the standard batch loop qualification report provided to all competitive carriers and adds additional information from its own databases concerning its own services that are proprietary to Verizon's broadband division.⁹⁰ Additionally, Verizon states that the extract received by Covad contains information that is not loop qualification information but that is nonetheless available to Covad through existing pre-ordering databases." Verizon also responds that it does make available to competitors address-specific information about the end user loops served by remote terminals and indicates which remote terminals are PARTS-equipped." Verizon notes that any competitor may receive an extract that is specifically sorted based on PARTS-equipped remote terminals." Finally, Verizon explains that, contrary to Covad's assertions, competitors have access to all of the underlying databases that Verizon uses to support RequestNet.⁹⁴

⁸⁷ Verizon McLean/Wierzbicki/Webster Decl., Attach. 2, at 4.

⁸⁸ Verizon Sept. 25 OSS/White Pages *Ex Parte* Lener at 2-3

⁸⁹ Verizon Sept. 25 OSS/White Pages *Ex Parte* Letter at 3. Verizon provides as an attachment to its letter a field-by-field comparison of the bulk extract all competitive carriers receive and the bulk extract with additional information created by its broadband division.

⁹⁰ Verizon Sept. 25 OSS/White Pages *Ex Parte* Letter at 2. Verizon states that the majority of data elements in the "VADI tile" are obtained from the standard bulk extract and the remainder are the retail broadband division's market codes.

⁹¹ Verizon Sept. 25 OSS/White Pages *Ex Parte* Lener at 3. The broadband division obtains from Verizon retail a customer list, allowing it to set the value of the "Reason Not Qualified" field to "NOT_VZ_CUST" on the extract records for customers who do not receive local telephone service from Verizon. Covad claims it is entitled to this information from Verizon. Covad Sept. 26 *Ex Parte* at 3. Verizon maintains that this information is customer proprietary network information (CPNI), not loop qualification information, but that it is available to competing carriers through the pre-ordering functions. Verizon Sept. 25 OSS/White Pages *Ex Parte* Lener at 3.

⁹² Verizon Sept. 25 OSS/White Pages *Ex Parte* Lener at 3-4

⁹³ *Id.* at 4. Verizon notes, however, that PARTS is not available in Virginia. *Id.* at 3.

⁹⁴ Verizon Sept. 25 OSS/White Pages *Ex Parte* Letter at 4-5. Verizon maintains that the people performing work requests access the same databases, LiveWire and Loop Facilities Assignment and Control System (LFACS), through the same pre-order interfaces as are available to competitive carriers. *Id.* Competitive carriers similarly have access to the Mechanized Loop Test (MLT) through the same maintenance and repair interfaces available to Verizon personnel. *Id.*

34. We find, based on the evidence in the record, that Verizon is providing loop qualification information in a nondiscriminatory manner. The Commission has never required incumbent LECs to ensure the accuracy of their loop qualification databases.” Instead, the Commission requires that, to the extent the incumbent LEC has compiled loop qualification information for itself, it is obligated to provide competitive LECs with nondiscriminatory access to the same information.” Even if the commenters are correct about the inaccuracies in Verizon’s LiveWire database, these errors would affect both Verizon and competitive carriers alike. The Commission has previously held that any inaccuracies or omissions in a BOC’s database are not discriminatory, to the extent they are provided in the exact same form to both retail and wholesale customers.⁹⁷

35. We do not find evidence to support the allegation that Verizon’s broadband retail division receives different loop qualification information than other competitive carriers? The record does not demonstrate that the additional information present on the VAD1 extract is loop qualification information.⁹⁹ We are persuaded that Verizon has one loop qualification database (Livewire) that both wholesale customers and Verizon’s retail broadband division use. We also find that Verizon has demonstrated that information indicating the presence of Verizon’s voice service on a loop is available to competitive carriers through pre-ordering processes.¹⁰⁰

⁹⁵

See *Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina and South Carolina*, WC Docket 02-150, Memorandum Opinion and Order, FCC 02-260, para. 142 (rel. Sept. 18, 2002) (*BellSouth Alabama/Kentucky/Mississippi/North Carolina/South Carolina Order*).

⁹⁶ See *UNE Remand Order*, 15 FCC Rcd at 3886, para. 429,

⁹⁷

See *Verizon Massachusetts Order*, 16 FCC Rcd at 9024, para. 66

⁹⁸ Because our loop qualification rules require that “an incumbent LEC must provide the requesting carrier with nondiscriminatory access to the same detailed information about the loop that is available to the incumbent,” evidence that Verizon’s broadband retail division receives different loop qualification information than competitive carriers would represent a violation of our rules. See *UNE Remand Order*, 15 FCC Rcd at 3885, para. 427.

⁹⁹ Because we do not find evidence that the additional information on the VAD1 extract is loop qualification information, we need not address Covad’s claim that Verizon’s broadband division must provide the information subject to Verizon’s section 251(c) unbundling obligations, pursuant to *ASCENT v. FCC*.

¹⁰⁰

For example, Verizon points out that Covad may perform a pre-order Customer Service Record (CSR) inquiry. If the customer is a Verizon customer, the CSR will be returned. If the customer is served by either a facilities-based competitive carrier or by UNE-P, the competitive carrier will receive an error message. Verizon Sept. 25 OSS/White Pages *Ex Parte* Letter at 3. Additionally, Covad’s sales representatives may ask the customer the name of his or her voice provider during the ordering process. *Id.* In light of this finding, we need not address Covad’s argument that this information must be provided pursuant to section 51.307(e) of the Commission’s rules, 47 C.F.R. § 51.307(e). We also need not address Covad’s challenge to Verizon’s characterization of this information as CPNI. Covad may seek a determination as to whether the specific information at issue is properly labeled CPNI by filing a complaint or petition for declaratory ruling.

36. Additionally, LiveWire is not the only source of loop qualification information available to competitive carriers. The *UNE Remand Order* required incumbent LECs to provide competitors all available information in its databases or internal records, in substantially the same time intervals that it is available to any incumbent LEC personnel.¹⁰¹ The record indicates that, if prequalification information is not found in the LiveWire database or the reason a loop is not qualified is other than loop length, Verizon will perform a manual (on demand) loop qualification either by using the pre-order xDSL Loop Qualification – Extended Inquiry transaction, or by using the local service request for a DSL loop.¹⁰² We find that Verizon provides competitive LECs with access to loop qualification information in a manner consistent with the requirements of the *UNE Remand Order*.

37. We find that Covad's arguments regarding Verizon's PARTS tariff offering are irrelevant to our assessment of Verizon's checklist compliance. We have previously determined that tariffed interstate access services are not part of the checklist, even if such offerings arguably could be substitutes for unbundled network elements (UNEs).¹⁰³ Moreover, as Verizon points out, PARTS is not even currently available in Virginia.¹⁰⁴ Further, as we discuss below in connection with checklist item 1, Covad and WorldCom filed petitions With the Commission to reject the PARTS tariff and the Bureau's Pricing Policy Division has initiated an investigation into the questions raised by the parties.¹⁰⁵ We believe this is the more appropriate forum to address Covad's concerns with PARTS. We note that, as part of its prequalification database, Verizon provides, upon request, information on all remote terminals served by a central office and the addresses associated with the remote terminals.¹⁰⁶ As part of this database, competing carriers may also determine whether the remote terminals have been equipped with PARTS capability.¹⁰⁷

c. Wholesale Billing

38. As part of its obligation to provide nondiscriminatory access to OSS, a BOC must demonstrate that competing carriers have nondiscriminatory access to its billing systems.¹⁰⁸ In

¹⁰¹ *UNE Remand Order*, 15 FCC Rcd at 3885-86, paras. 427-31

¹⁰² Verizon McLean/Wierzbicki/Webster Decl., Attach. 2, at 4-6. Verizon also provides competitive carriers with electronic access to the limited loop make-up information contained in its back office inventory system.

¹⁰³ See *Bell Atlantic New York Order*. 15 FCC Rcd at 4128, para. 340.

¹⁰⁴ Verizon Sept. 25 OSS/White Pages *Ex Parte* Letter at 3.

¹⁰⁵ See Verizon Telephone Companies, Tariff FCC Nos. I & 1 I, Transmittal No. 232, Order, DA 02-2140 (Chief, Pricing Policy Div., Wireline Competition Bureau Sept. 3, 2002).

¹⁰⁶ Verizon Sept. 25 OSS/White Pages *Ex Parte* Letter at 3-4.

¹⁰⁷ Verizon Sept. 25 OSS/White Pages *Ex parte* Letter at 3-4

¹⁰⁸ See Appendix C, para. 39.

particular, BOCs must provide two essential billing functions: (1) complete, accurate, and timely reports on the service usage of competing carriers' customers; and (2) complete, accurate, and timely wholesale bills.¹⁰⁹ Service usage reports, provided by Verizon as Daily Usage Files (DUF), are issued to competitive LECs that purchase unbundled switching and measure the types and amounts of incumbent LEC services that a competitive LEC's end-user customers use, typically measured in minutes of use, for a specific period of time (usually one day).¹¹⁰ An incumbent LEC issues wholesale bills to competitive LECs to collect compensation for the wholesale inputs, such as UNEs, purchased by competitive LECs from the incumbent LEC, to provide service to their end-users.¹¹¹ These bills are usually generated on a monthly basis, and allow competitors to monitor the costs of providing service.¹¹²

39. We find, consistent with the Virginia Hearing Examiner, that Verizon complies with its obligation to provide nondiscriminatory access to its billing functions.¹¹³ Verizon uses its expressTRAK and Carrier Access Billing System (CABS) billing systems to provide wholesale carrier bills.¹¹⁴ KPMG evaluated and found satisfactory all 75 test points regarding Verizon's billing systems in Virginia.¹¹⁵ No commenting parties raise any issues with Verizon's provision of service usage data to competitive LECs. Based on the evidence provided by Verizon, we find that its provision of service usage data through the DUF meets its obligations in this regard.¹¹⁶ Additionally, we note that no party challenges the timeliness of Verizon's wholesale bills in

¹⁰⁹ *Verizon New Jersey Order*, 17 FCC Rcd at 12333, para. 121

¹¹⁰ *Verizon McLean/Wierzbicki/Webster Decl.*, para. 136; *Verizon New Jersey Order*, 17 FCC Rcd at 12333, para. 121.

¹¹¹ *Verizon New Jersey Order*, 17 FCC Rcd at 12333, para. 121

¹¹² *Verizon New Jersey Order*, 17 FCC Rcd at 12333, para. 121.

¹¹³ Virginia Hearing Examiner's Report at 74.

¹¹⁴ Verizon primarily uses expressTRAK to provide billing for retail products, resale products, UNE-P, UNE-ports and UNE-loops. *Verizon McLean/Wierzbicki/Webster Decl.*, para. 135. Verizon uses CABS to provide billing for interoffice transport facilities, collocation, access services, carrier settlement, and other UNE products. *Verizon McLean/Wierzbicki/Webster Decl.*, para. 135. KPMG tested the accuracy and timeliness of actual bills generated by the expressTRAK and CABS systems as well as Verizon's procedures including processes for producing, distributing, and disputing bills. *Verizon McLean/Wierzbicki/Webster Decl.*, paras. 143-44. Although Verizon has largely replaced its legacy billing system with expressTRAK, Verizon continues to use its legacy billing system to serve a small and shrinking number of telephone numbers that have not yet been converted to the expressTRAK system. *Verizon McLean/Wierzbicki/Webster Decl.*, para. 26; see *infra* para. 53 (discussing the impact of customers remaining on the legacy billing system). As discussed below, only a minimal number of customers, both retail and wholesale, continue to be served by Verizon's legacy billing system.

¹¹⁵ *Verizon McLean/Wierzbicki/Webster Decl.*, paras. 143-44; see also KPMG Final Report at 18

¹¹⁶ *Verizon McLean/Wierzbicki/Webster Decl.*, paras. 136-37, 147.

Virginia, and based on the record, we find that Verizon demonstrates that it is providing carrier bills in a timely **manner**.¹¹⁷

40. However, several parties dispute Verizon's ability to provide complete, accurate, and auditable wholesale bills and contest the effectiveness and timeliness of Verizon's billing dispute resolution process. We are keenly attuned to Verizon's billing performance, as it has been an issue in recent Verizon section 271 applications.¹¹⁸ We recognize that Verizon has had a number of problems with its billing systems in the past, a few of which remain to a limited degree. Despite these largely historical problems, however, we find that Verizon demonstrates that its wholesale bills provide competing carriers in Virginia with a meaningful opportunity to compete. First, Verizon presents the evaluations of its billing OSS by third-party reviewers KPMG and PwC which found that Verizon provides complete, accurate, and auditable carrier bills.¹¹⁹ Verizon also asserts that the mount of bills in dispute by competing carriers is decreasing in recent months indicating, as a general matter, a trend of increasing accuracy, and the number of outstanding claims has diminished **substantially**.¹²⁰ Moreover, many of the competing carrier claims regarding their wholesale bills or their success in resolving billing disputes with Verizon involve historical problems that appear to have been resolved **prior** to Verizon's present application and do not indicate current systemic or recurring billing problems.¹²¹ As we found in the *Verizon New Jersey Order*, to show checklist noncompliance, a carrier must demonstrate that Verizon's billing performance is "materially worse than it was in Pennsylvania at the time of Verizon's application in Pennsylvania."¹²² Additionally, the

¹¹⁷ See generally Appendix B. 61-2-01-2030 (Timeliness of Carrier Bill); see also Verizon *New Jersey Order*, 17 FCC Rcd at 12333-34, para. 122.

¹¹⁸ See *Verizon Pennsylvania Order*, 16 FCC Rcd at 17427, para. 15; Verizon *New Jersey Order*, 17 FCC Rcd at 12333-34, para. 122.

¹¹⁹ Verizon McLean/Wierzbicki/Webster Decl., paras. 143-46; see KPMG Final Repon at 387-400 (Test PPR14 evaluating Verizon's processes for producing complete, accurate, and timely carrier bills), 409-15 (Test TVV9 functionally evaluating Verizon's ability to deliver timely, complete, and accurate carrier bills).

¹²⁰ Verizon McLean/Wierzbicki/Webster Decl., paras. 152 & Anach. 21; Verizon Virginia Reply at 48; Verizon McLean/Wierzbicki/Webster Reply Decl., para. 67.

¹²¹ For **example**, by far the largest claim of a systemic billing error asserted by Z-Tel was corrected by Verizon in May 2002, two months prior to Verizon's filing of the present application. See *infra* para. 45 (discussing inflated usage charges on carrier bills). Additionally, we have reason to believe that Verizon will continue to meet its obligation to redress its past problems. See Letter from Ann D. Berkowitz, Project Manager – Federal Affairs, Verizon, to Marlene H. Donch, Secretary, Federal Communications Commission, WC Docket No. 02-214 (filed Oct. 7, 2002) (Verizon Oct. 7 Billing *Ex Parte* Letter) (confirming that Verizon has applied credits to competing carrier bills for improper usage charges); Letter from Ann D. Berkowitz, Project Manager – Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-214 (filed Oct. 9, 2002) (Verizon Oct. 9 Billing *Ex Parte* Letter) at 1 & Attach. 1-2 (updating the Verizon Oct. 7 *Ex Parte* Letter with specific details regarding the credits applied to Z-Tel's account in Virginia).

¹²² *Verizon New Jersey Order*, 17 FCC Rcd at 12337, para. 127 (finding improper charges that occur on 2-3 percent of a carrier's wholesale bills and that amount to less than 1% of a carrier's overall charges, without further (continued....))

Commission has stated, “we recognize, as a practical matter, that high-volume, carrier-to-carrier commercial billing cannot always be perfectly accurate.”¹²³ While competing carriers advance a number of arguments about Verizon’s billing, many of these problems appear to be resolved historical problems and, even in the aggregate, these claims do not overcome Verizon’s demonstration of checklist compliance. “We address each claim more fully below.

(i) **Complete, Accurate and Auditable Carrier Bills**

41. *Auditable Adjustments to Electronic Carrier Bills.* As in Pennsylvania and New Jersey, Verizon provides competing carriers in Virginia with a choice of receiving their carrier bills in a standard retail-formatted bill, or in an industry-standard electronic Billing Output Specification (BOS) Bill Data Tape (BDT) format.¹²⁵ Verizon has allowed competitive LECs to choose the BOS-BDT bill as the official bill-of-record since June 1, 2002.¹²⁶ Verizon acknowledges that in order to ensure the accuracy of the BOS BDT bill, it **must** reconcile these bills against the retail-formatted bills.” In order to make the BOS BDT bills balance internally and match the retail-formatted bill, Verizon adjusts the BOS BDT bills using a manual process.¹²⁸ Any adjustments are then included in the “Other Charges and Credits (OC&C)” section of the BOS BDT bill.¹²⁹ The adjustments are identified using discrete phrase codes describing the reason for the adjustment.” A number of competitive LECs contend that the BOS BDT bill is not accurate or auditable. Although KPMG conducted a comprehensive test of Verizon’s expressTRAK billing system, due to the recent availability of BOS BDT billing in Virginia, KPMG evaluated only the contents of Verizon’s retail-formatted bill.¹³¹ Therefore, Verizon (Continued from previous page) _____ evidence, are insufficient to demonstrate that Verizon does not provide competing carriers a meaningful opportunity to compete).

¹²³ *Verizon New Jersey Order*, 17 FCC Rcd at 12336-37, para. 126.

¹²⁴ We note that Verizon’s billing performance in Virginia actually appears to be better than Verizon’s billing performance at the time of Verizon’s section 271 application for Pennsylvania.

¹²⁵ *Verizon McLean/Wierzbicki/Webster Decl.*, para. 140. Verizon notes that there are now over 40 competing carriers operating in Virginia that receive the **BOS** BDT carrier bill. *Id.* As the Commission has noted before, the BOS-BDT bill permits competing carriers to more readily audit their bills, especially those carriers providing service in higher volumes. *Verizon Pennsylvania Order*, 16 FCC Rcd at 17428, para. 17; *Verizon New Jersey Order*, 17 FCC Rcd at 12333-34, para. 122 & n.348.

¹²⁶ *Verizon McLean/Wierzbicki/Webster Decl.*, para. 140 & Attach. 17

¹²⁷ *Verizon McLean/Wierzbicki/Webster Decl.*, para. 141

¹²⁸ *Verizon McLean/Wierzbicki/Webster Decl.*, para. 142 & Anach. 18 (describing the adjustment process and noting that it is identical to the process initiated in Pennsylvania).

¹²⁹ *Verizon McLean/Wierzbicki/Webster Decl.*, para. 142

¹³⁰ *Verizon McLean/Wierzbicki/Webster Decl.*, para. 142

¹³¹ *Verizon McLean/Wierzbicki/Webster Decl.*, para. 144

presents an attested report by PwC as verification that its BOS BDT bills are auditable and comparable to the retail-formatted bill in terms of bill value, detail, and other characteristics.¹³² Based on our review of these third-party tests along with recent commercial performance, we find that Verizon provides wholesale bills, both the retail-formatted and BOS BDT versions, in a manner that offers **an** efficient competitor a reasonable opportunity to compete.

42. We disagree with allegations by WorldCom, Covad and Z-Tel that the BOS BDT carrier bills are not auditable because the adjustments Verizon makes to their bills, reported in the OC&C section of the bill, are not easily identifiable.” Because the charges and credits applied to this section of the bill contain only brief descriptive codes, Z-Tel and Covad allege that it is difficult to audit these bills.”¹³³ Verizon responds that all adjustments are described by phrase codes that are defined in documentation made available to competing carriers.”¹³⁴ Verizon also asserts that none of the phrase codes Z-Tel claims to find confusing have been on a Z-Tel bill since December 2001.¹³⁶ Moreover, regarding the OC&C charges for which Covad seeks identifying collocation site information, Verizon demonstrates that the identifying information can be derived from information present on all BOS BDT bills as defined by industry

¹³² Verizon McLean/Wierzbicki/Webster Decl., paras. **145-46**; Verizon Virginia Application, App. C, Tab **13**, Joint Declaration of PwC on Behalf of Verizon Virginia Inc. at paras. **8-13**, attached to Letter from Linda Pulley, Verizon, to Joel Peck, Virginia Commission (May **29**, 2002) (PwC Attestation). PwC conducted its analysis during 3 different test periods between January and May 2002. Verizon McLean/Wierzbicki/Webster Decl., paras. **145-46**. The Commission relied on similar evidence in its section **271** applications for Pennsylvania and New Jersey. See *Verizon Pennsylvania Order*, **16** FCC Rcd at **17430-31**, **17440-41**, paras. **21**, **35-36**; *Verizon New Jersey Order*, **17** FCC Rcd at **12335-36**, para. **125**.

¹³³ Z-Tel Comments Attach. I. Declaration of Justin T. Laughlin para. **9** (Z-Tel Laughlin Decl.); WorldCom Lichtenberg Decl., paras **8-11**. Covad Reply at **6**. To the extent that Covad asserts that products are identified only by USOC code, we note that Verizon makes detailed identification information based on USOC codes readily available to competing carriers. Verizon McLean/Wierzbicki/Webster Reply Decl., para. **66**; Covad at **15**. Also, we note that WorldCom’s allegations are based on Verizon’s performance in Pennsylvania, not Virginia, and are therefore not directly relevant to this proceeding. WorldCom Comments at **14-15**; see *Bell Atlantic New York Order*, **15** FCC Rcd at **4151**, paras. **398-99** (claim that Bell Atlantic violated Commission rules in other states was not relevant to the **New York** section **271** proceeding without evidence that the processes were the same in New York). See Verizon Virginia Reply at **44**.

¹³⁴ Z-Tel Laughlin Decl., para. **9**; Covad Reply at **6**. Although PwC found the amount of adjustments to be minimal, we note that PwC also found that the adjustments Verizon adds to the OC&C section of the BOS BDT bill “do not provide detailed information to allow recalculation of the adjustment.” PwC Attestation paras. **37**, **66**, **92**. PwC made similar findings in its review of Verizon’s BOS BDT bill in Pennsylvania. See *Verizon Pennsylvania Order*, **16** FCC Rcd at **17436-37**, **1744243**, paras. **29**, **38-39** & n.144 (noting that the manual adjustment process to BOS BDT bills does not provide competing carriers with detailed information sufficient to recalculate the adjustments).

¹³⁵ Verizon McLean/Wierzbicki/Webster Decl., para. **142**; Verizon McLean/Wierzbicki/Webster Reply Decl., para. **63** & Attach. **11**.

¹³⁶ Verizon McLean/Wierzbicki/Webster Reply Decl., para. **61**. Specifically, Verizon claims that since December **2001**, none of Z-Tel’s BOS BDT bills in Virginia have been adjusted in order to balance internally, or to match the paper bill. Verizon McLean/Wierzbicki/Webster Reply Decl., para. **61**.

standards.]" **Also**, Verizon states that automatic number identification (ANI) detail is available for most records in the OC&C section of the bill.¹³⁸ In addition, PwC quantified the absolute value of charges and credits used to adjust the BOS BDT carrier bills **and** found it to be **minimal**.¹³⁹ In its application, Verizon provides additional data quantifying the level of adjustments made to the BOS BDT bills between April and July 2002.¹⁴⁰ Verizon's data shows that the absolute value of adjusted charges continues to be minimal and appears to be decreasing each month.'" Competing carriers do not dispute PwC's or Verizon's quantification of the size of this problem and do not provide a quantification of the impact this problem has on their individual operations. In light of evidence that actual adjustments to BOS BDT bills are minimal and decreasing, and that information describing *the* adjustments can be derived from information on the bill, **we** do not find commenters have rebutted Verizon's evidence demonstrating checklist compliance.

43. Improper Tax Charges. Z-Tel contends that Verizon continues to charge taxes on its bill, despite Z-Tel's tax-exempt status, resulting in a need for additional auditing expenses and interfering with Z-Tel's ability to **compete**.¹⁴² Based on the record, we find that the amount of taxes Verizon has incorrectly assessed on Z-Tel's bills in Virginia has decreased significantly and, especially in recent months, is not competitively significant.'" Moreover, Verizon has

¹³⁷

Letter from Ann D. Berkowitz, Project Manager— Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. **02-214** (filed Sept. **20,2002**) (Verizon Sept. **20 Billing Ex Parte** Letter) at 1-2; Verizon Sept. **25 OSS/White Pages Ex Parte** Letter at 1 & Attach. A. Verizon also demonstrates that it notified Covad by letter to expect these charges for one-time changes in collocation rules and that these charges are properly located in the OC&C section of the bill. Verizon Sept. **20 Billing Ex Parte** Letter at 1-2 & Attachs. **1-2**.

¹³⁸

ANI detail is available for every OC&C record except account level changes and claim resolutions which get Summary Bill Master account identification. Verizon McLean/Wierzbicki/Webster Reply Decl. para. **64**.

¹³⁹

PwC Attestation para. **45** (finding that for the bill period December **16, 2001** to January **15,2002**, the absolute value of the adjustments made to the BOS BDT bills in order to balance to the retail-formatted bills, expressed as a percentage of the total current charges on the retail-formatted bills was **0.0028%**).

¹⁴⁰

The overall percentage of adjustments was **0.51%** in April, **0.428%** in May, **0.029%** in June, and **0.028%** in July. Verizon McLean/Wierzbicki/Webster Decl., para. **146 & Anach. 19**; Verizon McLean/Wierzbicki/Webster Reply Decl., para. **62 & Attach. 10**.

¹⁴²

Z-Tel Comments at **5**; Z-Tel Laughlin Decl., para. **7 & Attach. A** (certificate of tax exemption dated October **3, 2000**). Because NTELOS makes only a vague and unsupported allegation about Verizon's billing systems, we do not analyze their claim separately. NTELOS Comments at **6**; see Verizon McLean/Wierzbicki/Webster Reply Decl. para. **55**.

¹⁴³

Verizon Virginia Reply at **45**; Verizon McLean/Wierzbicki/Webster Reply Decl., para. **51**. Verizon demonstrates that average absolute value of incorrect taxes on Z-Tel's BOS BDT bills for April through August is less than **0.067%** of monthly charges and is steadily falling, amounting only 0.001% in August. Verizon McLean/Wierzbicki/Webster Reply Decl., para. **51 & Attach. 5**. Although not necessary to our finding, Verizon presents further evidence of this trend stating that Z-Tel's September bills contain no **tax** charges. Verizon Sept. **20** (continued...)

credited Z-Tel's accounts for improper tax charges assessed, and has identified Z-Tel's account with a tax-exemption indicator in its billing system since August 2002, apparently fixing the problem.¹⁴⁴

44. *Improper Feature and Service Charges.* We also reject Z-Tel's assertion that Verizon bills are discriminatory because of the inclusion of improper charges on the bill, such as charges for calling features that are included in the cost of the switch port, incorrect billing for alternately billed calls," and charges for inappropriate retail services.¹⁴⁶ While Z-Tel provides no specific data to substantiate its claims, between April and July 2002, Verizon has identified only a few instances of improper feature charges amounting to an insubstantial sum.'" During the same time period, Verizon has identified several occurrences of charges for Lifeline, Guardian, or call waiting, but none in July.'" Improper feature charges and retail service charges average less than 0.009 percent of Z-Tel's monthly charges between April and July.¹⁴⁹ Thus, it appears that these incidents were isolated and insignificant and do not indicate a systemic problem.¹⁵⁰ Further, while Verizon admits that a problem exists in mapping charges for alternately billed calls to the BOS BDT bill, Verizon proactively credits **all** competing carrier accounts for these calls through the adjustment process, even **though** it maintains that the charges are correct.'" Moreover, the record indicates that alternatively billed calls affect only a small

(Continued from previous page) _____

Billing Ex Parte Letter at 2. We note that in Pennsylvania, Verizon demonstrated that less than 0.1% of current billed charges were for incorrect taxes while in New Jersey, incorrect taxes amounted to 0.17%. *Verizon* Pennsylvania Order, 16 FCC Rcd at 17433-34, para. 26; *Verizon New Jersey* Order, 17 FCC Rcd at 12335-36, para. 125 n.363.

¹⁴⁴ Verizon Virginia Reply at 45; Verizon McLean/Wierzbicki/Webster Reply Decl., para. 51. Verizon asserts that for Z-Tel's main account, a manually populated field was corrected to indicate Z-Tel's tax-exempt status. Verizon Sept. 20 Billing *Ex Parte* Letter at 2. Verizon concedes that the extra Z-Tel account that had been improperly created by Verizon, and has now been eliminated, was not set up to exclude taxes from the bill. Verizon Sept. 20 Billing Ex *Porte* Letter at 2; see discussion *infra* para. 46 (addressing this claim separately). Verizon demonstrated in the state record that it has procedures in place to establish tax exempt status on competing carrier accounts and provide credits for misapplied taxes. Verizon Virginia Application, App. C, Vol. 5, Tab 14, OSS Reply Declaration in Virginia Commission Case No. PUC-2002-0046, para. 150.

¹⁴⁵ Alternately billed calls include, for example, collect calls and operator services calls. Verizon McLean/Wierzbicki/Webster Reply Decl., para. 60.

¹⁴⁶ Z-Tel Comments at 5; Z-Tel Laughlin Decl., paras. 7-8

¹⁴⁷ Verizon McLean/Wierzbicki/Webster Reply Decl., para. 52

¹⁴⁸ Verizon McLean/Wierzbicki/Webster Reply Decl., para. 53. These charges combined do not amount to a significant sum. Verizon McLean/Wierzbicki/Webster Reply Decl., para. 53.

¹⁴⁹ See Verizon McLean/Wierzbicki/Webster Reply Decl., paras. 52-53 & **Attach 5**.

¹⁵⁰ Verizon McLean/Wierzbicki/Webster Reply **Decl.**, paras. 52-53

¹⁵¹ Verizon McLean/Wierzbicki/Webster Reply Decl., para. 60. Verizon maintains that the charges are correct, but are mislabeled due to a **system** error.